

**FRANK'S CASE
MAY**

**STAY IN THE
COURTS**

**FOR MANY
MONTHS**

U. S. Supreme Court
May

Grant Hearing Within
60

Days, but Decision
May be

Held Up Indefinitely

MOTION TO ADVANCE
CASE

IS EXPECTED FROM
STATE

Power to Indict and Try
Con-

demned Man Second
Time

is Question Which May Eventually Arise

Six months and perhaps a year or even more will elapse before the Frank Case is finally passed on by the United States Supreme Court.

In allowing Frank's Appeal from Judge W. T. Newman's decision refusing his Application for a Writ of error, Justice Lamar simply placed the Appeal on the Calendar of the United States Supreme Court. Ordinarily it would be about eighteen months before the Case would be reached, but in Cases where a State is a party, it is the Custom of the Court to advance hearings when requested by the State.

Solicitor H. M. Dorsey states that he and Attorney General Warren Grice, representing the State, will very probably make a motion before the Supreme Court asking that the Frank Appeal be heard in advance of its position on the Calendar.

In such an event, the hearing will, it is believed, occur within about sixty days after the motion is made to the Supreme Court. It is considered that both the State's Attorneys and Frank's counsel will require at least sixty days in which to prepare their briefs and post themselves for their arguments.

LONG DELAY POSSIBLE.

After the hearing, it may be weeks and months before the Court hands down a decision. In his opinion Monday, Justice Lamar states that there are several important questions raised in the Frank Appeal which have never been considered before by

the Supreme Court. This would seem to indicate that the Court will take time to decide these points.

Should the Court decide he was entitled to ask for the Writ, thus reversing Judge Newman, the Case would be remanded to Judge Newman for the taking of evidence in support of the Petition asking for the Writ and in opposition thereto.

Should the Supreme Court eventually decide that Frank must be released from Custody, it is said, a further question, about which there is uncertainty, would arise as to the power of the State to indict and try him a second time. It is said, Authorities differ as to whether the first trial would be regarded as having placed Frank in "jeopardy."

Should the Supreme Court decide Frank was not entitled to the benefit of the Habeas Corpus Writ, the State of Georgia would no longer be barred from imposing the death sentence.

If Judge Newman is reversed and the Case is sent back to him for a hearing upon the facts, there is certain to be an Appeal from his decision, whichever way he holds. If he grants the Writ of Habeas Corpus and orders Frank's release, the State will appeal his decision to the United States Supreme Court. On the other hand, if he denies Frank's motion for the Writ, Frank will appeal.

Then, and not until then, will the Case be up before the United States Supreme Court for a Final Judgment. Of course, however, if the Supreme Court sustains Judge Newman's recent decision denying the Writ of Habeas Corpus, that will end the Case in the Supreme Court. In such an event, Frank's last resort will be to go before the pardon board and the Governor.

A dispatch from Washington Tuesday, says that formal steps in the granting of an Appeal to the Supreme Court for Leo M. Frank were delayed today, pending the submission to Justice Lamar of properly drafted papers by Frank's Attorneys. Their signing announced yesterday that Frank was entitled to an Appeal from the refusal of Judge Newman to release him on a Habeas Corpus Writ.

JUDGE LAMAR'S OPINION.

The opinion for Judge Lamar follows:

“In re Leo Frank—Habeas Corpus—”

“Leo Frank’s recent Application for a Writ of Error was denied by me on the ground that no Federal Question was involved in the ruling of the Supreme Court of Georgia, that his motion to set aside the verdict finding him guilty of murder had been filed too late. This Petition represents a wholly different Question, since it is an Application for the Allowance of an Appeal from the judgment of a Federal Court on a rec-

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ord which presents a purely Federal Question, irrespective of regulations governing State practice.”

“Frank’s Petition for the Writ of Habeas Corpus, addressed to the Judge of the United States District Court for the Northern District of Georgia, alleges that on his trial for murder in the Superior Court of Fulton County, Georgia, public feeling against him was so great that the presiding Judge advised his Counsel not to have him present in the Court Room when the verdict was returned and that his involuntary absence, under such circumstances, when the verdict was received, deprived him of a hearing to which he was entitled, under the Constitution and rendered his conviction void. He avers that his motion for a new trial was overruled and he then moved to set aside the verdict as being void for want of jurisdiction; that in passing on that motion the State Supreme Court held that while he had the Constitutional Right to be present when the verdict against him was returned into Court, yet such verdict could not be attacked, by a motion to set aside, after the Expiration of the trial term and after his motion for a new trial had been finally refused. He alleges that his attempt to have that judgment reviewed in the Supreme Court of the United States failed because, though a Federal Question was raised in the Record, the decision of the Supreme Court of Georgia was based on a matter of State practice.”

QUESTION INVOLVED.

“He, therefore, filed this petition for a Writ of Habeas Corpus in which he claims that the right to be present at the rendition of the verdict was jurisdictional and that on Habeas Corpus, he is entitled to a hearing on the question as to whether he had waived or could waive his Constitutional Right to be present when the verdict of guilty was returned into Court.”

“The District Judge heard no evidence as to the truth of the allegations, but refused the Writ on the ground that the facts therein stated did not entitle Frank to the benefit of that remedy. He declined to give the Certificate of Probable Cause and this Application for that Certificate and for the Allowance of an Appeal was then made to me as the Justice assigned to the Fifth Circuit.”

“Under the Act of 1908, the Application for the Certificate is not to be determined by any views which may be held as to the effect of the final judgment of the State Supreme Court refusing a new trial, but by considering whether the nature of the Constitutional right asserted and the absence of any decision expressly foreclosing the right to an Appeal, leaves the matter so far unsettled as to constitute Probable Cause justifying the allowance of the Appeal.”

“The Supreme Court of the United States has never determined whether, on a trial for murder in a State Court, the due process Clause of the Federal Constitution guarantees the Defendant a right to be present which the verdict is rendered.”

ISSUE NOT SETTLED.

“Neither has it decided the effect of a final judgment refusing a new trial in a Case where the defendant did not make the fact of his absence when the verdict was returned a ground of the motion, nor claim that the rendition of the verdict in his absence was the denial of a right guaranteed by the Federal Constitution.”

“Nor has it passed upon the Effect of its own refusal to grant a Writ of Error in a Case where an alleged jurisdictional question was presented in a motion filed at a time not authorized by the practice of the State where the trial took place. Such questions are all involved in the present Case, and since they have never been settled by any authoritative ruling by the Full Court, it cannot be said that there is such a want of Probable Cause as to warrant the refusal of an Appeal. That being true, the Act of Congress requires that the Certificate should be given and the Appeal allowed.”

“J. R. LAMAR.”

“Associate justice, Supreme Court of the
United States.”

“December 14, 1914.”
